

ARTICLE 37-03.1

ADMINISTRATIVE HEARING AND APPEAL PROCEDURES FOR DRIVER'S LICENSE SUSPENSION OR REVOCATION

Chapter

37-03.1-01 Administrative Hearings - Driver's License Suspension or
Revocation - Appeals to District Court

CHAPTER 37-03.1-01

ADMINISTRATIVE HEARINGS - DRIVER'S LICENSE SUSPENSION OR REVOCATION - APPEALS

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37-03.1-01-01. Definitions. The definitions provided in North Dakota Century Code title 39 apply to this article, and:

1. "Hearing officer" means the person designated by the director to conduct the administrative hearing.
2. "Petitioner" means the party in interest requesting the administrative hearing under North Dakota Century Code section 39-06-33.

History: Effective March 1, 1992.

General Authority: NDCC 39-06-33

Law Implemented: NDCC 39-06-33

37-03.1-01-02. Applicability. The procedures in this chapter apply to administrative hearings arising under North Dakota Century Code section 39-06-33, and North Dakota Administrative Code chapters 37-03-03 and 37-03-05.

Any rule in chapter 37-03-03 or 37-03-05 pertaining to the administrative hearing process prevails if in conflict with a provision of this chapter.

History: Effective March 1, 1992.

General Authority: NDCC 39-06-33

Law Implemented: NDCC 39-06-33

37-03.1-01-03. Informal disposition of administrative appeal. When not prohibited by statute or rule, an administrative appeal may be disposed of, in whole or in part, by stipulation, settlement, waiver of the hearing, default, or consent.

History: Effective March 1, 1992.

General Authority: NDCC 39-06-33

Law Implemented: NDCC 39-06-33

37-03.1-01-04. Director to conduct hearing. The director may designate a hearing officer to conduct the hearing. The director or the director's hearing officer has the authority to call and examine witnesses, to examine records and other evidence, and to administer oaths to witnesses. The director and the director's hearing officers have the authority to issue subpoenas on behalf of the department or upon the request of a party to the hearing, compelling the attendance and testimony of witnesses or the production of documents or other items described in the subpoena. The issuance of a subpoena for the production of documents will be made only upon the submission of written justification for such documents. Witness fees, mileage, and related costs are payable at the rate payable in district court. The witness fees, mileage, and related costs are to be paid by the party requesting the witness's appearance, or the department if it requests the appearance.

History: Effective March 1, 1992.

General Authority: NDCC 39-06-33

Law Implemented: NDCC 39-06-33

37-03.1-01-05. Evidence. Evidence will be admitted pursuant to the North Dakota Rules of Evidence. Such rules may be waived by the department, the director, or the director's hearing officers; however, only relevant evidence is admissible. The petitioner must be informed of the waiver prior to or at the hearing. All objections must be noted in the record of the hearing. Only information and evidence offered, admitted, and made part of the official record of the hearing may be considered by the department, except as otherwise provided in this chapter or by statute.

History: Effective March 1, 1992.

General Authority: NDCC 39-06-33

Law Implemented: NDCC 39-06-33

37-03.1-01-06. Testimony. All testimony at the hearing must be given under oath or affirmation. At the time of administering the oath or affirmation, the hearing

officer shall advise the witness of the provisions of subsection 1 of North Dakota Century Code section 12.1-11-01 and of the maximum penalty for perjury.

History: Effective March 1, 1992.

General Authority: NDCC 39-06-33

Law Implemented: NDCC 39-06-33

37-03.1-01-07. Consideration of information not presented at formal hearing. The department may avail itself of competent and relevant information or evidence in its possession or furnished by members of its staff, or secured from any person in the course of an independent investigation conducted by it, in addition to the evidence presented at the hearing. It may do so after providing a copy of such information or evidence to the petitioner, and, upon written request, the petitioner must be given the opportunity to present additional information or evidence and to cross-examine the person furnishing the additional information or evidence. The request to present information or evidence by the petitioner must be made in writing within ten days of the mailing of the evidence to the petitioner. Any further testimony must be taken at a hearing noticed in accordance with North Dakota Century Code section 39-06-33.

History: Effective March 1, 1992.

General Authority: NDCC 39-06-33

Law Implemented: NDCC 39-06-33

37-03.1-01-08. Record. A record must be made of all evidence presented at the hearing. Oral testimony may be taken by a court stenographer or by an electronic recording device. All evidence presented at the hearing must be maintained by the department. A copy of the electronic recording of the hearing will be furnished to the party requesting the hearing upon written request and upon payment of the uniform charge therefor.

1. For one cassette \$10.00
2. Handling and postage 1.00
3. Exhibits, 8 1/2 x 11 .05 per page
4. Exhibits, others, at cost

If the oral testimony is taken by a court stenographer, the transcript fee will be that charged by the court stenographer.

History: Effective March 1, 1992.

General Authority: NDCC 39-06-33

Law Implemented: NDCC 39-06-33

37-03.1-01-09. Findings of fact, conclusions of law, and decision-Notice. Within thirty days after the evidence has been received, briefs filed, and final statements made, the hearing officer must make recommended findings of

fact, conclusions of law, and decision to the director. Within fifteen days after the receipt of the recommended findings of fact, conclusions of law, and decision, the director or the director's hearing officer shall by order adopt the recommendation of the hearing officer or make separate findings of fact, conclusions of law, and decision, including therein the reason for rejecting the recommendations of the hearing officer. Upon final disposition of the matter, the department must furnish a copy of the decision to the petitioner in accordance with subsection 3 of North Dakota Century Code section 39-06-33.

History: Effective March 1, 1992.

General Authority: NDCC 39-06-33

Law Implemented: NDCC 39-06-33

37-03.1-01-10. Petition for reconsideration. The petitioner, within fifteen days of the mailing of an adverse decision, may request reconsideration of the matter. The petition must specifically state the grounds for relief or a statement of any further showing to be made in the matter. The petition must state if a rehearing is requested. The petition constitutes a part of the record. The department may deny such petition or grant a rehearing upon such terms as it may prescribe. This section does not limit the department's right to reopen any proceeding under any continuing jurisdiction granted to it by law. Any rehearing granted on a petition for reconsideration must be conducted pursuant to this chapter. If the petition for reconsideration is denied, notice of the denial must be given pursuant to North Dakota Century Code section 39-06-33.

History: Effective March 1, 1992.

General Authority: NDCC 39-06-33

Law Implemented: NDCC 39-06-33

37-03.1-01-11. Who may take appeal. The petitioner may appeal the department's final decision as provided in North Dakota Century Code section 28-32-15, except the time for the appeal is based upon the notice given under North Dakota Century Code section 39-06-33, and section 37-03.1-01-09.

History: Effective March 1, 1992.

General Authority: NDCC 39-06-33

Law Implemented: NDCC 39-06-33

37-03.1-01-12. Certified record on appeal. The certified record must consist of:

1. A facsimile of the order giving rise to the hearing and a printout of the electronic data supporting the order.
2. The request for hearing.
3. Notices of all proceedings.
4. All prehearing notices and documents.

5. Any motions, briefs, petitions, or requests.
6. A statement of matters officially noticed.
7. The transcript of the hearing prepared by the person presiding at the hearing, including all testimony taken, and any written statements, exhibits, reports, memoranda, documents, or other information or evidence considered before final disposition of proceedings.
8. Any recommended findings of fact, conclusions of law, and decision or final findings of fact, conclusions of law, and decision.
9. Any information considered pursuant to section 37-03.1-01-07.

History: Effective March 1, 1992.

General Authority: NDCC 39-06-33

Law Implemented: NDCC 39-06-33

37-03.1-01-13. Transmittal of record on appeal. The department will prepare and transmit the record on appeal to the district court as provided for in North Dakota Century Code section 28-32-17, without cost to the party filing the appeal.

History: Effective March 1, 1992.

General Authority: NDCC 39-06-33

Law Implemented: NDCC 39-06-33